



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC SUIT NO. 337 OF 2011**

**IN THE MATTER OF THE LAND PARCEL NO. GATAMAIYU/KAMUCHEGE/360**

**BETWEEN**

**CHARLES NGURE KIBE**

**(Suing as legal representative of the**

**Estate of KIBE MUIGAI) ..... PLAINTIFF**

**VERSUS**

**JOHN NJUGUNA WANGOMBE**

**(Sued as the administrator of the estate of**

**WANGOMBE MUIGAI) ..... DEFENDANT**

**RULING**

On 15<sup>th</sup> May, 2015 the court (Gacheru J.) delivered judgment in this matter in favour of the Plaintiff against the Defendant. Pursuant to that judgment, a decree was extracted on 19<sup>th</sup> June, 2015. The decree of the court was on the following terms.

1. THAT Land Reference Gatamaiyu/Kamuchege/360 (“the suit property”) was held in trust by Wangombe Muigai for himself and his brothers Kibe Muigai and Ngure Muigai.
2. THAT the estate of Kibe Muigai is entitled to recover the trust property from the estate of Wangombe Muigai.
3. THAT the 9.7 acres of Land comprised in Land Reference Garamaiyu/Kamuchege/360 be sub-divided into two equal portions so that the estate of Kibe Muigai and Wangombe Muigai may get 4.85 acres of the land each.
4. THAT the costs to be paid by the Defendant.

The said decree of the court has neither been stayed nor set aside. What is now before me is the Notice of Motion application dated 14<sup>th</sup> September, 2016 by the Plaintiff/decree holder seeking the following orders:

1. THAT the Land Registrar, Lari, Kiambu Land Registry do remove forthwith the restriction that was registered on L.R No. Gatamaiyu/Kamuchege/360 on 8<sup>th</sup> March, 2010.
2. THAT the Land Registrar, Lari, Kiambu Land Registry do register forthwith the decree that was issued herein on 19<sup>th</sup> June, 2015 against the tile of L.R No. Gatamaiyu/Kamuchege/360.
3. THAT the Land Registrar, Kiambu Land Registry do partition forthwith L.R No. Gatamaiyu/Kamuchege/360 into two (2) equal portions as decreed by the court.
4. THAT the Deputy Registrar do proceed to execute all the necessary documents on behalf of the Respondent herein to effect the orders sought in 1, 2 and 3 above.

The application was brought on the grounds that the Plaintiff has sought to register the decree issued herein against the title of the suit property so that he may proceed with the subdivision of the property in accordance with the decree of the court but the Land Registrar has declined to effect the registration on the ground that there is a restriction on the title that was entered on 8<sup>th</sup> March, 2010 at the request of the local District Officer which was to remain in force pending the resolution of a dispute over the distribution of the suit property.

The Plaintiff has averred that after the issue of the distribution of the suit property was resolved by the court, he requested the District Officer, Gatamaiyu Division on whose instructions the said restriction was placed on the title of the suit property to authorize the Land Registrar to remove the said restriction. The Plaintiff has averred that the Defendant objected to the removal of the said restriction and as such the said District Officer refused to accede to the Plaintiff's request. The Plaintiff has averred that the existence of the said restriction has impeded the subdivision of the suit property in accordance with the decree of the court. The Plaintiff has averred that it is necessary for the said court decree to be registered against the title of the suit property to enable him carry on with the subdivision of the property and subsequent transfer to the estate of Kibe Muigai its share of the property in accordance with the decree of the court. The Plaintiff has averred that the dispute over the distribution of the suit property having been resolved by this court, the continued existence of the said caution is unjustified. The Plaintiff has contended that it is in the interest of justice and fairness that the order sought be granted.

The application was not opposed. When the application came up for hearing on 14<sup>th</sup> February, 2018, the Plaintiff's advocate Mr. Njuguna relied entirely on the affidavit in support of the application and urged the court to allow the application as prayed. I have considered the application together with the affidavit in support thereof. There is no dispute that the court delivered a judgment herein on 15<sup>th</sup> May, 2015 in which the court made a finding that the suit property was held in trust by Wangombe Muigai (deceased) for himself and his brothers among them, Kibe Muigai (deceased). The court directed following that finding that the suit property be subdivided into two (2) equal portions so that the estate of Kibe Muigai and the estate of Wangombe Muigai can each have 4.85 acres of the land. The said judgment of the court has not been stayed or set aside. The Plaintiff has contended that he has not been able to execute the decree of the court because of a restriction that was registered against the title of the suit property on 8<sup>th</sup> March, 2010 at the request of the District Officer, Gatamaiyu Division. I have noted that the restriction was placed on the title of the suit property pending the resolution of a dispute over the distribution of the suit property. I am in agreement with the Plaintiff that this court has now rendered itself with finality on the issue of the distribution of the suit property as between the plaintiff and the defendant and as such the continued existence of the said restriction on the title of the suit property is unjustified. I am also in agreement that the said restriction is frustrating the execution of the decree of this court.

For the foregoing reasons, I am satisfied that the Plaintiff's application is well founded. I therefore allow the application on the following terms:

1. The Land Registrar Kiambu County is hereby directed to remove the restriction that was registered against L.R No. Gatamaiyu/Kamuchege/360 ("the suit property") on 8<sup>th</sup> March, 2010 forthwith.
2. The Land registrar Kiambu County is hereby directed to register the decree issued herein on 19<sup>th</sup> June, 2015 against the title of the suit property forthwith after the removal of the said restriction.
3. The Plaintiff shall present to the Land Registrar a mutation prepared by a Government Surveyor in accordance with the decree issued herein on 19<sup>th</sup> June, 2015 duly signed by the Defendant for registration.
4. In preparing the mutation, the surveyor shall have regard to the manner in which the families of Kibe Muigai (deceased) and Wangombe Muigai (deceased) are settled on the property if at all they are in occupation and in case there is need for a road(s) to be provided for the resultant subdivisions, the land for the roads shall be contributed equally by the two families.
5. In the event that the Defendant fails or refuses to sign the mutation or any other document necessary to facilitate the sub-division of the suit property and transfer of a portion thereof to the estate of Kibe Muigai as decreed by the court, the Deputy Registrar of this court is authorized to execute the mutation or any such document.
6. The Plaintiff shall bear the costs of the sub-division if any.
7. Each party shall bear its own costs of the application.

**Delivered and Dated at Nairobi this 2<sup>nd</sup> Day of March 2018**

**S. OKONG'O**

**JUDGE**

**Ruling delivered in open court in the presence of:**

.....for the Plaintiff

.....for the Defendant

.....Court Assistant